

## BANKRUPTCY

A certified copy of the Assignment for the Benefit of Creditors or Receiving Order must be attached to the transmission.

The Transfer of Land from a trustee in bankruptcy must contain evidence as to whether or not inspectors were appointed. If inspectors were appointed the Transfer from the trustee must name the inspectors and the inspectors must approve of the transfer, which approval must be provided.

The trustee should make the Transmission and Transfer subject only to those encumbrances that are registered by a secured creditor. Section 70 (1) of The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, states that the Receiving Order does not have precedence over the rights of a secured creditor. Of note, secured creditor does not include an individual who has registered a Judgement (s. 70(1)).

Homesteads Act evidence with regard the bankrupt party must be provided by the trustee when executing a disposition of land (including a transfer). Where there is a person with Homesteads Act rights in the affected lands, and that person is not a co-owner and party to the disposition, that person will have to sign either a Release of their Homesteads Act rights or a consent to the disposition before the disposition can be accepted for registration at Land Titles.

Please note that if the trustee wishes to have title to a purchaser issue clear of registrations from unsecured creditors, the Transfer from the trustee must not be made subject to those encumbrances. Land Titles will issue the created title subject to all encumbrances registered by secured parties, and also to all encumbrances listed in the Transfer of land. In the event that an unsecured encumbrance is carried forward to the created title by virtue of the fact that the Transfer was made subject to it, Land Titles will require a Discharge to remove it, and will not lapse it either automatically or upon the request of the Transferee or trustee.